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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 C 07 5298

14 RUSSELL BRADBERRY, individually and on
15 behalf of a class of similarly situated individuals,

16 Plaintiff,

17 vs.

18 mBLOX, INC. a Delaware corporation,

19 Defendant.

Case No.

**NOTICE OF REMOVAL OF CIVIL
ACTION FROM THE SUPERIOR
COURT OF THE STATE OF
CALIFORNIA FOR THE COUNTY OF
SANTA CLARA**

20 PLEASE TAKE NOTICE that Defendant MBLOX, INC. (hereinafter "mBlox"), pursuant
21 to 28 U.S.C. §§ 1332(d), 1441, 1446 and 1453, hereby removes to this Court the state court action
22 described below.

23 **I. INTRODUCTION**

24 1. On September 13, 2007, an action was commenced in the Superior Court of the
25 State of California for the County of Santa Clara entitled *Russell Bradberry v. mBlox, Inc.*, Case
26 No. 107-CV-094234. A copy of the Complaint is attached hereto as Exhibit A.

27 2. Defendant mBlox, Inc. was served with the Summons and the Complaint on
28

ORIGINAL
FILED

OCT 17 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PJH

1 September 20, 2007. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. §
2 1446(b).

3 3. This action is a civil action of which this Court has original jurisdiction under 28
4 U.S.C. § 1332, and is one which may be removed to this Court by mBlox pursuant to the
5 provisions of 28 U.S.C. § 1441.

6 4. As more fully set out below, this case is properly removed to this Court pursuant to
7 28 U.S.C. § 1441, because mBlox has satisfied the procedural requirements for removal and this
8 Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(d), 1367(a),
9 and 1453.

10 5. The Superior Court of the State of California for the County of Santa Clara is
11 located within the Northern District of California. Therefore, venue is proper because it is the
12 “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

13 6. No previous application has been made for the relief requested herein.

14 **II. JURISDICTION PURSUANT TO CLASS ACTION FAIRNESS ACT**

15 7. This case is subject to removal pursuant to the recently enacted Class Action
16 Fairness Act of 2005, 28 U.S.C. §§ 1332, 1453 (“CAFA”).

17 8. As set forth below, the Complaint alleges a putative class action in which: (1) there
18 are 100 or more members in the plaintiff’s proposed class; (2) at least some members of the
19 proposed class have a different citizenship from some defendants; and (3) the claims of the
20 proposed class members exceed the sum or value of \$5,000,000 in the aggregate. Thus, this
21 Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

22 9. **Class Action Consisting Of More Than 100 Members:** In his complaint,
23 Plaintiff purports to represent a class of “all wireless telephone subscribers in the nation who were
24 charged by mBlox for mobile content services.” Complaint, ¶ 43(A). In addition, Plaintiff
25 purports to represent a statewide “Sub-Class” “consisting of all members of the Class who entered
26 into subscription contracts within the state of California.” Complaint, ¶ 43(B). Plaintiff asserts
27 that “[t]he Classes each consist of thousands of individuals and other entities.” Complaint, ¶ 44.
28 Based on these and other allegations, the aggregate number of class members of all proposed

1 plaintiff classes is obviously greater than 100 for purposes of 28 U.S.C. § 1332(d)(5)(B).

2 10. **Diversity Of Citizenship:** Plaintiff is a citizen of the State of California.
3 Complaint ¶ 9. mBlox is, and was at the time Plaintiff commenced this action, a corporation
4 organized under the laws of the State of Delaware with its principal place of business in the State
5 of California, and therefore, is a citizen of Delaware and California. Although Plaintiff and mBlox
6 are both citizens of California, for purposes of CAFA, all that is needed to meet the diversity of
7 citizenship requirement is that “any member of a class of plaintiffs is a citizen of a State different
8 from any defendant.” 28 U.S.C. § 1332(d)(2)(A). This requirement is met because Plaintiff
9 purports to represent a class of “all wireless telephone subscribers in the nation.” Complaint, ¶
10 43(A).

11 11. **The Amount-In-Controversy Requirement:** Plaintiff in this case alleges that
12 mBlox has “systematically, repeatedly and without authorization caused charges to be placed on
13 the cell phone bills of thousands of consumers across the country...and it has profited enormously
14 from its wrongful conduct.” Complaint, ¶ 7. Plaintiff alleges in his heading on page 7 of the
15 Complaint that “Defendant Billed and Collected Millions of Dollars in Unauthorized Mobile
16 Content Charges.” Plaintiff alleges three separate claims: (1) Restitution/Unjust Enrichment
17 (Count I); (2) Tortious Interference with a Contract (Count II); and (3) Unlawful, Unfair and
18 Deceptive Business Practice in violation of California Business & Professions Code § 17200
19 (Count III). Based on these allegations, Plaintiff seeks several forms of relief, including:
20 economic, monetary, actual, consequential, compensatory, and exemplary damages, injunctive
21 relief, reasonable costs and attorneys’ fees, prejudgment interest, and “such other and further relief
22 as equity and justice may require.” Complaint, Prayer for Relief at 13-14. Under CAFA, the
23 claims of the individual class members in a class action are aggregated to determine if the amount
24 in controversy exceeds the sum or value of \$5,000,000. 28 U.S.C. § 1332(d)(6). Under this
25 standard, Plaintiff’s claim easily meets the jurisdictional threshold. Given the breadth of this
26 proposed nationwide class, the amount sought by each individual need only be modest for the
27 aggregated amount in controversy to exceed \$5 million.

28 12. Pursuant to 28 U.S.C. § 1446(a), mBlox has attached hereto as Exhibit B copies of

1 all pleadings, process and orders in the state court action.

2 13. Pursuant to 28 U.S.C. § 1446(a), mBlox shall promptly file a Notice of Filing of
3 Notice of Removal with the Santa Clara County Superior Court. Likewise, mBlox will promptly
4 serve Plaintiffs' attorneys of record with this Notice of Removal and the Notice of Filing.

5 **III. SUPPLEMENTAL JURISDICTION**

6 14. There is currently pending before this Court a case entitled *Bradberry v. T-Mobile*
7 *USA, Inc.*, C-06-6567 ("*Bradberry I*") (a copy of the *Bradberry I* Complaint is attached hereto as
8 Exhibit C). The Court has original jurisdiction over that suit pursuant to CAFA, 28 U.S.C. §
9 1332(d), and because it involves a federal question (violation of 47 U.S.C. § 201). The allegations
10 of the instant Complaint and the *Bradberry I* Complaint arise from the same common nucleus of
11 operative facts and are substantially identical. For example, the facts relating to the named
12 Plaintiff are almost mirror images of one another. Complaint, ¶¶ 21-32; *Bradberry I* Complaint,
13 ¶¶ 8-16; 23-24. Similarly, the facts describing the nature of the case and relating to recycled "dirty
14 numbers" are essentially the same. Complaint, ¶¶ 1-2; *Bradberry I* Complaint, ¶¶ 1-2. A Motion
15 to Consolidate the two actions will be filed with Judge Wilken (who is presiding over the
16 *Bradberry I* case) shortly after the filing of this Notice of Removal.

17 15. 28 U.S.C. § 1367 (a) provides that in any civil action of which the district court has
18 original jurisdiction – such as *Bradberry I* – the court shall have supplemental jurisdiction over all
19 other claims that are so related that they form part of "the same case or controversy" and do not
20 fall within any of the circumstances under which district courts may decline to exercise
21 supplement jurisdiction. *See* 28 U.S.C. § 1367 (a)-(c). Supplemental jurisdiction extends to
22 claims involving the joinder or intervention of additional parties, therefore making no distinction
23 between pendent claim and pendent party cases. *Id.*; *Exxon Mobil Corp. v. Allapattah Svcs., Inc.*,
24 545 U.S. 546, 559 (2005). The Supreme Court has further clarified that Section 1367(a) confers
25 supplemental jurisdiction over claims that do not independently satisfy the amount-in-controversy
26 requirement, if the claims are part of the same case or controversy. *Exxon Mobil*, 545 U.S. at 559.
27 A class action may be removed to a district court without regard to whether any defendant is a
28 citizen of the state in which the action is brought; i.e., there is no requirement for "complete

1 diversity." 28 U.S.C. § 1453(b).

2 16. In light of the foregoing, 28 U.S.C. § 1367 provides a distinct and independent
3 basis for this Court's jurisdiction that is in addition to original jurisdiction under CAFA.

4 WHEREFORE, Defendant mBlox respectfully requests that this entire Action proceed
5 before this Court as an action properly removed.

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7 DATED: October 17, 2007

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

8
9 By: 

10 Jeffrey L. Fillerup

11 Attorneys for Defendant mBlox, Inc.

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